

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARGARET ORTIZ

Plaintiff,

vs.

MACY'S RETAIL HOLDINGS, LLC
And MACY'S RETAIL HOLDINGS, INC.

Defendants.

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CASE NO. 5:22-CV-545

JURY DEMANDED

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COME Defendants **MACY'S RETAIL HOLDINGS, LLC and MACY'S RETAIL HOLDINGS, INC.** (hereinafter sometimes referred to as "Removing Defendants"), and hereby file this Notice of Removal, pursuant to 28 U.S.C. § 1446, to the United States District Court for the Western District of Texas, San Antonio Division. As grounds for removal, Removing Defendants state as follows:

I.
FACTUAL BACKGROUND & PROCEDURAL HISTORY

1.1 According to Plaintiff's Original Petition, on or about September 27, 2020, Plaintiff Margaret Ortiz was a patron at the Macy's inside South Park Mall. Plaintiff claims she was provided with an "Employee Basket" for her items and told she was able to take the basket with her down the escalator. Plaintiff claims she was standing on the escalator going down, when the escalator jerked, causing an item to fall out of the "Employee Basket." As Plaintiff reached down for the fallen item, the escalator jerked again causing the "Employee Basket" and the items in it to fall over, striking Plaintiff in the back. Plaintiff then fell over with the "Employee Basket" and its

contents, forcing Plaintiff to hit the escalator and the basket. *See Plaintiffs' Original Petition, Ex. B.*

1.2 On or about April 25, 2022, Plaintiff Margaret Ortiz filed her Original Petition in the 224th Judicial District Court of Bexar County, Texas, Cause No. 2022CI07622, alleging claims of premises liability, negligent hiring, supervision and retention, and gross negligence against Macy's Retail Holdings, Inc. and Macy's Retail Holdings, LLC. *See id.* Plaintiff seeks monetary relief over \$1,000,000.00. *See id.*

1.3 Macy's Retail Holdings, LLC was served with citation and Plaintiff's petition on May 3, 2022. Macy's Retail Holdings, Inc. was served with citation and Plaintiff's petition on May 4, 2022.

1.4 Removing Defendants file this notice of removal within the 30-day time-period required by 28 U.S.C. §1446(b), after having received information sufficient to determine that the case was removable and being served with the Plaintiff's Original Petition.

1.5 Plaintiff is an individual residing in Bexar County, Texas.

1.6 Removing Defendant Macy's Retail Holdings, LLC is a foreign limited liability company organized under the laws of the State of Ohio and with its principal place of business located at 145 Progress Place, Springdale, Ohio. It has one member: Macy's, Inc., a foreign corporation organized under the laws of the State of Delaware and with its principal place of business located at 7 West 7th Street, Cincinnati, Ohio.

1.7 Removing Defendant Macy's Retail Holdings, Inc. was a foreign corporation organized under the laws of the State of New York and with its principal place of business located at 7 West 7th Street, Cincinnati, Ohio. However, as of June 2020, Removing Defendant Macy's Retail Holdings, Inc. is no longer an existing entity.

1.8 Removing Defendants are not “citizens” of the State of Texas and do not have a principal place of business in the State of Texas.

1.9 As set forth below, diversity jurisdiction exists and Removing Defendants hereby timely remove this matter to Federal Court.

II.

PROCEDURAL REQUIREMENTS FOR REMOVAL

2.1 This suit was properly removed to this Court under 28 U.S.C. § 1441(a) because this suit was pending in a state court located within the judicial district of the United States District Court for the Western District of Texas, San Antonio Division.

2.2 Removing Defendants were previously served with Plaintiff’s Original Petition and consented to the removal of this matter to Federal Court.

2.3 As required by 28 U.S.C. § 1446(d), Removing Defendants served their original Notice of Removal on all parties, *see* Doc. 1. and promptly filed said notice with the clerk of the 224th District Court of Bexar County, Texas. *See Ex. B.*

2.4 All pleadings, process, orders and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). *See id.*

III.

BASIS FOR REMOVAL

3.1 Removal is proper because there is complete diversity between the parties. 28 U.S.C. § 1332(a); *Darden v. Ford Consumer Fin. Co.*, 200 F.3d 753, 755 (11th Cir. 2000).

3.2 Plaintiff is a resident and citizen of the State of Texas.

3.3 Removing Defendants are not “citizens” of the State of Texas.

3.4 In Plaintiff’s Original Petition, Plaintiff states that she “seeks monetary relief within the jurisdictional limits of this Court and over \$1,000,000.00,” which exceeds the federal

jurisdictional amount in order to meet removal to federal court. When plaintiff's monetary demand is stated in the complaint, defendant can rely on that allegation to meet the jurisdictional requirement. *See S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir.1996).

3.5 All pleadings, orders and other filings in this state court action are attached to this notice as required by 28 U.S.C. §1446(a) and Local Rule 81. *See Ex. B.* Additionally, Removing Defendants have filed herewith a list of all counsel of record, including the addresses, telephone numbers and the parties represented. *See Ex. C.*

3.6 Venue is proper in this district for removal under 28 U.S. C. §1441(a) because the state court where the action had been pending is located in this district.

IV.
JURY DEMAND

4.1 Removing Defendants hereby make this Demand for a Jury trial.

V.
PRAYER

5.1 For the foregoing reasons, Defendants **MACY'S RETAIL HOLDINGS, LLC and MACY'S RETAIL HOLDINGS, INC.** remove the action to this Federal Court and request this case be placed on the docket of the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I do hereby certify that on the 26th day of May 2022 we electronically filed ***Defendants'*** ***Notice of Removal*** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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